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April 26, 2002

VIA HAND DELIVERY

Mr. David O. Carson
Office of the General Counsel
U.S. Copyright Office
Library of Congress
James Madison Building, Room LM-403
101 Independence Ave, S.E.
Washington, D.C. 20559-6000

Re: Reply Comments to Notice of Proposed Rulemaking Dated February 7, 2002

Dear Mr. Carson,

On behalf of the college and university broadcasters identified in the attached (the "College Broadcasters"), we submit herewith an original and ten (10) copies of the Reply Comments of the College Broadcasters in connection with the above-referenced rulemaking regarding recordkeeping requirements for webcasting under statutory license.

If you have any questions in connection with these comments, please contact me.

Respectfully submitted,

Margaret L. Miller

Margaret L. Miller

Enclosure

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GENERAL COUNSEL
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Washington, D.C.

In the Matter of Rulemaking	)	
Notice and Recordkeeping for Use of Sound Recordings Under Statutory License	)	Docket No. RM 2002-1

REPLY COMMENTS OF COLLEGE AND UNIVERSITY RADIO BROADCASTERS
WEBCASTING UNDER STATUTORY LICENSE

The undersigned college and university broadcasting stations (the "College Broadcasters"), by their attorneys, submit these Reply Comments pursuant to the Copyright Office's (the "Office") *Notice of Proposed Rulemaking*, published at 67 Fed. Reg. 5761 (Feb. 7, 2002) ("NPRM"). The NPRM concerns the notice and recordkeeping requirements under the statutory licenses for webcasting in Sections 112(e) and 114(d)(2) of the Copyright Act, 17 U.S.C. §§ 112(e) and 114(d)(2). These Reply Comments respond to the initial comments filed by the Recording Industry Association of America, Inc. (the "RIAA") and the initial comments filed by the American Federation of Musicians of the United States and Canada ("AFM") and the American Federation of Television and Radio Artists ("AFTRA") on April 5, 2002.[1]

[1] Comments of the Recording Industry Association of America, Inc., *Notice of Proposed Rulemaking*, Docket No. 2002-1, Comment No. 30 (Apr. 5, 2002) ("RIAA Comments"). Comments of the American Federation of Musicians of the United States and Canada and the American Federation of Television and Radio Artists, *Notice of Proposed Rulemaking*, Docket No. 2002-1 Comment No. 28 (Apr. 5, 2002) ("AFM/AFTRA Comments").

DISCUSSION

I. Response to Initial Comments of the RIAA.

A. The Office Should Not Accept the Reporting Requirements of the Interim Regulations as the Basis for the Proposed Regulations.

The RIAA argues that the interim regulations for pre-existing subscription services adopted by the Office in 1998 (the "Interim Regulations") should be the starting point for the proposed recordkeeping requirements because much of the data requested in the proposed regulations are similar to the data requested under the Interim Regulations and the services subject to the reporting under the Interim Regulations allegedly have not been hindered by compliance with such requirements.[2] The Office should reject this argument because the proceedings that led to the Interim Regulations did not include representatives of the services currently affected by the proposed regulations, the requirements under the proposed regulations are not identical and the RIAA provides no evidentiary support that the services have been able to comply with the Interim Regulations without any hindrance.

The argument of the RIAA that the Interim Regulations should be accepted as the basis for the proposed regulations implies that the webcasting industry and its players are the same today as at the time of the proceeding for the Interim Regulations: "[N]either the Copyright Office nor those entitled to royalties should be required to expend precious time and money in this rulemaking revisiting issues that the Copyright Office decided nearly four years ago, after an in-depth rulemaking proceeding."[3] Clearly, the webcasting industry today is dramatically different from the webcasting industry in 1996 when the Office first requested comments on

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[2] Notice and Recordkeeping for Digital Subscription Transmissions, Interim Regulations, 63 Fed. Reg. 34,289 (June 24, 1989).

[3] RIAA Comments at 8.

notice and recordkeeping requirements and the Office received only a handful of submissions.[4] The number and types of entities that have entered the webcasting industry and now have a direct and substantial interest in the outcome of the Office's decision have significantly increased. Many of the services currently webcasting were not webcasting at the time of the Office's call for comments that led to the Interim Regulations. In addition, at the time the Interim Regulations were under consideration, broadcasters streaming their signals on the Internet believed that they were exempt from having to obtain a statutory license to engage in their webcasting activities.[5]

Streaming broadcasters (of which the College Broadcasters are a subset) contend that the exemption under Section 114(d)(1)(A) of the Copyright Act, relating to nonsubscription broadcast transmissions, applies to the public performance of sound recordings by AM/FM radio broadcasters when they stream their over-the-air broadcast signals over the Internet.[6] Broadcasters believe that the exemption applies regardless of the medium of transmission. As a result, broadcasters and a large number of the current players in the webcasting industry did not participate in the proceedings that led to the adoption of the Interim Regulations. For this reason, we urge the Office to reject the RIAA's implication that the previous rulemaking fairly represented the interests of all services currently webcasting, particularly the interests of the College Broadcasters.

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[4] The Office issued a Notice of Proposed Rulemaking on May 13, 1996 requesting comments on notice and recordkeeping requirements for digital transmissions of sound recordings. The Office received a total of four comments and three reply comments, from RIAA and three digital music subscription services. *See* Notice and Recordkeeping for Subscription Digital Transmissions, 62 Fed. Reg. 34,035, 34,036 (June 24, 1997).

[5] A group of commercial broadcasters are still arguing this issue in an appeal to the United States Court of Appeals for the Third Circuit from a decision in the Eastern District of Pennsylvania affirming a December, 2000 Office decision that the simultaneous Internet retransmission by a broadcaster of its AM/FM signal was not exempt from copyright liability under 17 U.S.C. § 114(d)(1)(A). See *Bonneville v. Peters*, Civ. Action No. 01-0408 (E.D. Pa. Aug. 1, 2001), affirming *Public Performance of Sound Recordings*, 65 Fed. Reg. 77,292 (Dec. 11, 2000).

[6] Finding support in the plain language of the statute and in legislative history, broadcasters argue that AM/FM streaming transmissions constitute "broadcast transmissions" covered by the statutory exemption. Consequently, broadcasters are not subject to copyright liability for their simultaneous streaming of their AM/FM signals, and

The RIAA also mischaracterizes the requirements under the Interim Regulations in its statement that "[m]uch of the data in the proposed regulations is identical to that required by the Original Determination."[7] Less than half of the data requested under the proposed regulations were required under the Interim Regulations. The Interim Regulations only required ten (10) fields of information under the "Intended Playlist," as compared to the eighteen (18) fields of information under the proposed regulations.[8] Moreover, the Interim Regulations did not require services to maintain the "Listener's Log" or the "Ephemeral Phonorecord Log" requirements that are proposed in the NPRM.

The RIAA also overstates in its initial comments when it opines: "It is reasonable to conclude, therefore, that any service operating under a statutory license or exemption after June 24, 1998, the date the Copyright Office published the Original Determination, did so with full knowledge of its likely obligation to provide similar data reporting."[9] As mentioned above, until a date well after the adoption of the Interim Regulations, broadcasters, including the College Broadcasters, believed their simultaneous streaming of their AM/FM signals were exempt from the statutory licenses. Commercial broadcasters' inability to comply with the proposed recordkeeping requirements[10] supports the College Broadcasters' identical claim, as the College Broadcasters and their non-commercial peers all have far fewer resources than the commercial broadcasters. Furthermore, a large number of noncommercial educational radio stations have only recently become aware of the scope of the requirements under the statutory licenses. Due to

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would not be subject to licensing fees, terms, or recordkeeping requirements. A contrary finding would upset the mutually beneficial promotional value that radio airplay generates for the recording industries and broadcasters.

[7] RIAA Comments at 3.

[8] 37 C.F.R. § 201.36.

[9] RIAA Comments at 3.

[10] *See* Joint Comments of Radio Broadcasters, *Bonneville International Corporation, et al.*, Docket No. 2002-1 Comment No. 31, p. 33 (Apr. 5, 2002) ("Radio Broadcasters' Comments").

the ancillary nature of streaming services and the predominantly non-professional student/volunteer staff at noncommercial educational radio stations, these broadcasters are less familiar with (and do not have the resources to explore) unresolved legal requirements related to webcasting and with the intricacies of evolving copyright policy related to the Internet.

The RIAA further states in its initial comments that, "Thus, history rather than hysteria should serve as a guide to the Copyright Office in this proceeding."[11] While this statement makes for a clever sound bite, history in no way supports the RIAA claim that "the 'burden' of providing detailed reports of use did not thwart, hinder or cripple the development of such services."[12] At no point does the RIAA produce concrete evidence of consistent compliance with the recordkeeping requirements under the Interim Regulations by services that are still in webcasting. In fact, in the February 20, 2002 decision of the Copyright Arbitration Royalty Panel ("CARP") recommending webcasting rates under the same statutory licenses, the CARP references admissions of the RIAA to the contrary:

> However, as RIAA apparently concedes, some services may not currently possess the proper software, or technical expertise, to track or calculate accurately their performances of sound recordings. Accordingly, as RIAA proposes, statutory licensees should be permitted to make a reasonable estimate of the number of their performances until such time as they can reasonably be expected to acquire the software and expertise.[13]

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[11] RIAA Comments at 4.

[12] *Id.*

[13] Rate Setting for Digital Performance Right in Sound Recordings and Ephemeral Recordings, Docket No. 2000-9, CARP DTRA 1 & 2 (2002), p. 109 (citations omitted) (the "CARP Report").

Moreover, scores of webcasters have already ceased operation, as abundantly reported in the popular press, in response to the proposed rules and the CARP Report.[14] The College Broadcasters believe that the data submitted to the Office under its initial comments filed in response to the NPRM (the "College Broadcasters Comments") sufficiently proves the point that the proposed recordkeeping requirements are overly burdensome and would jeopardize the College Broadcasters' ability to continue webcasting activities.[15] The College Broadcasters urge the Office to start afresh with the NPRM and to reject the argument of the RIAA that issues under the Interim Regulations should not be revisited.

B. The Proposed "Uniform Report of Performances" Does Not Alleviate the Burden.

The new "Uniform Report of Performances" proposed by the RIAA in its initial comments (the "Uniform Report") replaces the "Intended Playlist" and the "Listener's Log" proposed under the NPRM recordkeeping requirements and also requires the reporting of eighteen (18) separate fields of information. The RIAA has eliminated the Listener's Log and certain fields of information under the Intended Playlist: (i) the time zone in which transmission originated; (ii) the recording label; and (iii) copyright owner information.[16] The RIAA has

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[14] *See* Kim Campbell, *Fees Threaten To Silence Web Radio*, The Christian Science Monitor, Apr. 4, 2002, at 17; William Glanz, *Web Radio Faces Dead Air*, The Washington Times, Apr. 15, 2002, *at* http://www.washingtontimes.com/businesstimes/20020415-68509696.htm (reporting that the number of standard radio stations streaming their signals to the Internet has reduced from approximately 5,700 to 4,600 in large part due to the impending high cost of compliance with DMCA). Several college radio stations have already been forced to shut down their webcasting operations in anticipation of the Office's DMCA decisions, including those at Clemson University (WSBF), New York University (WNYU), Arkansas Tech University (KXRJ), Oregon State University (KBVR), Central Michigan University (WMHW), Bellevue Community College (KBCS), University of Pittsburgh (WPTS), Virginia Tech University (WUVT), Swarthmore College (WSRN), and University of Wisconsin-Whitewater (WSUW). *See* Scott Robertson, *WRPI Faces End of Internet Broadcast*, 122 Polytechnic Online 27 (Apr. 17, 2002), *at* http://poly.union.rpi.edu/article_view.php3?view=1453&part=1; Mark L. Shahinian, *Why College Radio Fears the DMCA*, Salon (Dec. 13, 2001), *at* http://www.salon.com/tech/feature/2001/12/13/college_webcast/print.html.

[15] Joint Comments of College and University Radio Broadcasters Webcasting Under Statutory License, *Notice of Proposed Rulemaking*, Docket No. 2002-1, Comment No. 21, p. 15 (Apr. 5, 2002) (the "College Broadcasters Comments").

[16] The College Broadcasters wholeheartedly applaud the RIAA's proposal to eliminate the "Listener's Log" from the statutory reporting requirements. The College Broadcasters believe that collection of such information is both

consolidated into one field (separate fields in the Intended Playlist) the date and time of transmission of a sound recording and added four (4) more fields of information. Two of these new fields of information simply give new names to fields proposed under the Intended Playlist. The "marketing label" field in the Uniform Report corresponds to the identification of the "recording label" field under the Intended Playlist. The "Track Label (P) Line" data field in the Uniform Report is essentially the "copyright owner information" field in the Intended Playlist. As a result, seventeen (17) of the data fields basically have not changed from the Intended Playlist. For the same reasons set forth in the College Broadcasters Comments, collecting and reporting the information that has not changed from the NPRM recordkeeping requirements as well as the information from the additional data fields under the Uniform Report continues to be overly burdensome for the College Broadcasters.[17]

1. The Requested Information in the Uniform Report Is Unavailable.

Except with respect to the eliminated Listener's Log and the three discarded fields of information from the Intended Playlist, the College Broadcasters restate and incorporate by reference in these Reply Comments their statements concerning their inability to collect the information required under the Intended Playlist and the Ephemeral Phonorecord Log. [18] As with data requested under the Intended Playlist, a significant amount of the data proposed under the Uniform Report is either not available to the College Broadcasters or is not consistently

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impractical and illegal. See also Comments of Beethoven.com, *Notice of Proposed Rulemaking*, Docket No. 2002-1, Comment No. 23, p. 3 (Apr. 4, 2002) ("there is no certifiable way for webcasters to ensure that data is not collected on consumers which are minors, a collection of data which is expressly prohibited by current laws").

[17] The College Broadcasters otherwise do not object to providing the name of the service and the transmission category. As set forth in the College Broadcasters Comments, the College Broadcasters also do not object to providing the sound recording title, the featured artist and, where available, the record label, as these are the only data fields necessary to administer the statutory licenses.

[18] The College Broadcasters also note that many commercial broadcasters report an inability to comply with the Intended Playlist requirements, many of which are identical to the data requested under the Uniform Report. *See* Radio Broadcasters' Comments at 40-54.

available. For the same reasons set forth in the College Broadcasters Comments with respect to the data required under the Listener's Log, the College Broadcasters would not be able to report the total number of performances of each sound recording.[19] The College Broadcasters find that the influence indicator data field is irrelevant to the simultaneous streaming operations of the College Broadcasters.[20] The College Broadcasters call the attention of the Office to the fact that the RIAA recognizes that certain requested information is unavailable, stating that the requested information "will be included" in the promotional CDs delivered to a service.[21] The RIAA further recognizes the need for the services to find alternative sources for missing information and to research such information in order to comply with the reporting requirements.[22] Because this information not only is not yet available on most compact discs (and certainly not the promotional CDs obtained by the College Broadcasters) but also is not identified on the sound recordings already in the music libraries of the College Broadcasters, the College Broadcasters would have to expend significant resources to research such information and enter the information into a database. As already explored in the College Broadcasters Comments, the College Broadcasters and their peers do not have the budgets to cover the costs of such labor.

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[19] Even the RIAA concedes that it is unreasonable to expect a report on "the number of recipients receiving transmissions, assuming such information is not available for a transmission model that is similar to over-the-air radio (i.e., there is no feedback from a recipient's receiving device that informs the service that a particular transmission has been received)." RIAA Comments at 37. Using the RIAA's model of between one and zero listener for calculating the number of performances would create an even worse effective per-performance fee rate for the College Broadcasters, as explored in the College Broadcasters Comments. *See* College Broadcasters Comments at note 21.

[20] Because the Uniform Report would apply to all webcasting services, regardless of the nature of the service, many of the recordkeeping requirements are irrelevant or inappropriate in the context of the College Broadcasters' webcasting operations.

[21] RIAA Comments at 43.

[22] *Id.* at 44.

2. The College Broadcasters Do Not Have the Technical Resources to Comply with the Revised Reporting Requirements.

The reporting proposed by the RIAA seems to be predicated on services that are highly automated, unlike the operations of many of the College Broadcasters. [23] Even for those College Broadcasters with capabilities for computerized programming, current technology and available software does not readily allow the College Broadcasters to provide some of the data fields.[24] The RIAA repeatedly claims that its proposed recordkeeping requirements are reasonable, yet it does not identify a single existing vendor currently able to supply software, at an affordable price, that would facilitate compliance with the proposed recordkeeping requirements. Initial comments by the RIAA chronicle in extreme detail the method by which the collecting entity processes data received.[25] However, the RIAA fails to acknowledge at any point the considerable financial impact from the amount of labor that would be required to collect and report such data.

The RIAA proposals have also repeatedly fallen short in accounting for services that do not make use of automated systems, and for which the use of automated systems is inherently inappropriate. The RIAA fails to recognize the very basic operational conventions of broadcasters, and noncommercial educational radio stations such as the College Broadcasters in

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[23] See the College Broadcasters Comments at 12, 17. See also Comments of WOBC, Oberlin College, *Notice of Proposed Rulemaking*, Docket No. 2002-1, Comment No. 24, pp. 1-2 (Apr. 5, 2002); Comments of Mayflower Hill Broadcasting Corporation, licensee of WMHB at Colby College in Waterville, Maine, *Notice of Proposed Rulemaking*, Docket No. 2002-1, Comment No. 15, pp. 1-2 (Apr. 4, 2002); Comments of Collegiate Broadcasters, Inc., *Notice of Proposed Rulemaking*, Docket No. 2002-1, Comment No. 16, pp. 2-3 (Apr. 4, 2002); Comments of the National Federation of Community Broadcasters, Inc., *Notice of Proposed Rulemaking*, Docket No. 2002-1, Comment No. 17, pp. 1&3 (Mar. 29, 2002); Comments of the Honorable Dennis J. Kucinich, Member of Congress, *Notice of Proposed Rulemaking*, Docket No. 2002-1, Comment No. 34, p. 2 (Apr. 5, 2002).

[24] RIAA's proposed 37 C.F.R. § 20136(e)(1)(viii).

[25] RIAA Comments at 28-31.

particular. RIAA's description of webcasters' operations erroneously characterizes all services as being alike:

> It is the service that obtains the recordings, 'rips' those recordings to make reproductions for a database from which transmissions are made and enters the meta data for those sound recordings so that they are identifiable in the database.[26]

This description of typical webcaster operations by the RIAA demonstrates the RIAA's complete lack of understanding of the programming operations of the College Broadcasters and other noncommercial educational student-operated radio stations.[27] Most of the College Broadcasters air musical selections directly from the native recording material – compact discs, vinyl records, or magnetic tape – rather than "ripping" a digital recording into a computer-based automation system. Few of the stations represented by the College Broadcasters maintain electronic "meta data" files of the recordings they air. Those that do make limited use of electronic database files do not have the capabilities to connect this information with their Internet streaming server computers. As explored in the College Broadcasters Comments with respect to the NPRM proposed recordkeeping requirements, the College Broadcasters hardly have the technical means to comply with the Uniform Report.

3. The Voluminous Data Requested Under the Uniform Report is Unnecessary to the Administration of the Statutory Licenses.

As demonstrated by the December 2001 agreement among the RIAA, the Corporation for Public Broadcasting ("CPB") and National Public Radio ("NPR") setting the terms and rates for webcasting by CPB-funded stations discussed in the College Broadcasters Comments (the

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[26] *Id.* at 8.

[27] The RIAA publicly acknowledged its lack of understanding of the College Broadcasters' operations. "Jonathan Lamy, a spokesman for the [RIAA], said of the colleges' complaints, 'We understand their concerns, but we have not yet decided what kind of reporting requirements make sense for noncommercial radio stations.'" Andrea L. Foster, *College Broadcasters Fear Tracking Rule May Force an End to Webcasts*, The Chronicle of Higher Education, Apr. 26, 2002, at A39.

"RIAA/CPB Agreement"), the exhaustive amount of information requested under this NPRM (including the Uniform Report) is not necessary to the effective and efficient administration of the statutory licenses.[28] Under the RIAA/CPB Agreement, based upon information and belief, covered services required to report do not have to report as much data as proposed under the Uniform Report. The RIAA's acceptance of such reduced reporting requirements supports the argument that individual sound recordings can be identified, sufficiently for the purposes of the statute, with significantly fewer than the eighteen (18) data items proposed under the Uniform Report.

The RIAA also dismisses the sampling method for data; however, the RIAA/CPB Agreement reportedly requires recordkeeping of licensed performances for only portions of the broadcast schedule of CPB-funded stations with ten (10) or more full-time employees (as established in the College Broadcasters Comments, CPB-funded stations with fewer than 10 employees have been exempted from *all* recordkeeping requirements under the statutory licenses).[29] Noncommercial educational broadcast stations not supported by CPB should enjoy the same benefits already provided by the RIAA to stations receiving CPB funding. The College Broadcasters strongly urge the Office to conclude that because the RIAA can adequately

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[28] *All CPB-Qualified Radio Stations Covered by ASCAP, RIAA Licenses* (24 Pub. Broadcasting Rep., Issue 1, Jan. 11, 2002), 2002 WL 9859342. *See* College Broadcasters Comments at 22. The initial comments from the RIAA make no reference to the private RIAA/CPB Agreement. The College Broadcasters suppose this omission to be the result of an express prohibition of disclosure binding the parties to that agreement; however, the College Broadcasters further believe that such a term is arguably contrary to the intent of Congress. The CARP proceeding also did not make mention of any specific terms of this voluntary agreement, although the parties entered into this agreement following a negotiation period instigated by the Panel. See CARP Report, p. 17. The College Broadcasters contrast this void with the observation that the CARP Report includes several references to other agreements into which the RIAA voluntarily entered with webcasters, including quotations from more than a few specific redacted passages. Because the terms of the RIAA/CPB Agreement have received no apparent consideration in any previous Copyright Office proceeding, the College Broadcasters believe a review of that agreement in the current action is crucial to a fair determination, even if the Copyright Office chooses to review the agreement "*in camera*."

[29] See *All CPB-Qualified Radio Stations Covered by ASCAP, RIAA Licenses* (24 Pub. Broadcasting Rep., Issue 1, Jan. 11, 2002), 2002 WL 9859342.

distribute royalty fees collected under the RIAA/CPB Agreement, the RIAA could likewise reduce recordkeeping requirements and utilize a sampling system to collect and distribute statutory license fees.

C. The Ephemeral Phonorecord Log Serves No Purpose.

The RIAA regrettably neglects to recognize that the "Ephemeral Phonorecord Log" serves absolutely no purpose under the statute, particularly in the context of simultaneous streaming by broadcasters. In the case of simultaneous streaming activities by noncommercial educational broadcasters, as the College Broadcasters argued earlier in the College Broadcasters Comments, if a log of ephemeral copies could be reasonably generated, such a record would correspond perfectly with the sound recordings identified in the "Intended Playlist," and would therefore be entirely duplicative.[30] Moreover, subject to confirmation by the Office, the College Broadcasters' information suggests that *no* CPB-funded station is required under the RIAA/CPB Agreement to generate a discrete record of ephemeral copies made or destroyed. Again, the willingness of the RIAA to eliminate the recordkeeping with respect to ephemeral copies under the RIAA/CPB Agreement indicates that such a log is not necessary for the proper distribution of license fees or for monitoring of compliance with license terms.

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[30] College Broadcasters' Comments at p. 14.

II. Reply to the Initial Comments of the AFM and AFTRA.

A. The AFM/AFTRA Proposed Additional Reporting Requirements Increase the Burden of Reporting.

1. Additional Reporting Information Is Not Available to the College Broadcasters

AFM and AFTRA principally propose to require services to provide additional information regarding non-featured musicians and vocalists on sound recordings.[31] The College Broadcasters strenuously object to the addition of any more fields of information under the proposed regulations for recordkeeping under the statutory licenses. Such additional information would not be consistently available to statutory licensees for the same reasons previously discussed at length by the College Broadcasters and by others in their initial comments to the NPRM. Even when such information is available, adding another data field to the already overly burdensome eighteen (18) fields of information requested per sound recording performed would be completely unreasonable. The College Broadcasters acknowledge that a portion of license fees is to be collected under the statutory licenses to be distributed to non-featured artists. Nevertheless, the statute requires webcasters to provide only *reasonable* notice of the use of sound recordings, not *exhaustive* notice.[32] To the extent that reporting allows the designated collective to distinguish one sound recording from another (i.e., by providing title and featured artist), the services have fully complied with the requirements of the statute. For the same reasons set forth in the College Broadcasters Comments, the burden should be on the designated collective to fill in the missing information.

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[31] AFM/AFTRA Comments, p. 2.

[32] 17 U.S.C. § 114(f)(4)(A).

2. The RIAA Already Possesses Much of the Requested Information.

The RIAA states in its initial comments that its member companies "create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States...."[33] As the industry representative for its member companies, the RIAA has already compiled an extensive database of information on sound recordings owned by its member companies. The RIAA should make this information available to the designated collective to find the information the RIAA, AFM, and AFTRA claim is necessary to administer the statutory licenses. The College Broadcasters support the proposal of the Digital Media Association in its initial comments to the NPRM to extend the proceedings under the NPRM to explore the use of copyright owner-supplied information in combination with the cost-efficient use of a common database.[34] The College Broadcasters contend that the effective use of a common database of information supplied by RIAA's member companies could facilitate the reporting process as well as the collection and distribution of license fees.

III. The Office Should Create a Special Exemption for the Recordkeeping Requirements for Noncommercial, Non CPB-Funded Educational Radio Stations.

The proposed recordkeeping requirements, even as modified by the RIAA, have been proven by the College Broadcasters and others to be oppressive for small student-operated educational radio stations. A clear precedent for relief has been established in the voluntary RIAA/CPB Agreement. For the same reasons set forth in the College Broadcasters Comments, the Office should exempt from the statutory recordkeeping requirements small noncommercial radio stations licensed to high schools, colleges and universities and other nonprofit educational institutions in the same way that the RIAA/CPB Agreement exempts CPB-funded

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[33] RIAA Comments at 1.

[34] Comments of the Digital Media Association, *Notice of Proposed Rulemaking*, Docket No. 2002-1 Comment No. 20 at p. 3 (Apr. 5, 2002).

noncommercial radio stations with fewer than ten (10) full-time employees from recordkeeping requirements. The College Broadcasters reiterate that the minimum fee for exempted noncommercial broadcasters should be appropriately reduced to a low blanket fee similar to those established under 17 U.S.C. § 118 statutory licenses.[35]

IV. Alternatively, the Office Should Establish Narrowly Tailored Recordkeeping Requirements for Noncommercial, Non-CPB-Funded Educational Radio Stations.

If the Office denies the request of the College Broadcasters for such an exemption, the evidence plainly supports a significant reduction from the onerous requirements proposed in the NPRM and more recently revised in the proposed Uniform Report. The College Broadcasters as well as many other commenters to the NPRM have presented rational persuasive arguments for replacing a census model of data collection with a sampling model. As the RIAA has accepted a sampling model for even the largest of CPB-funded broadcasters, certainly other noncommercial educational broadcasters deserve the same consideration.

CONCLUSION

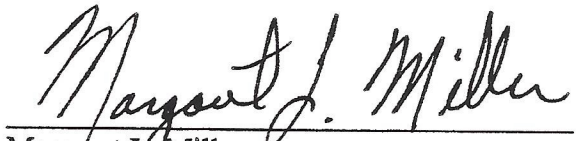
For the reasons set forth above, the College Broadcasters again strongly urge the Office to exempt the College Broadcasters and all other non-CPB-funded, noncommercial educational radio stations with fewer than ten (10) full-time equivalent employees that are licensed to colleges, universities and other nonprofit educational institutions from the recordkeeping requirements proposed in the NPRM and the initial comments of the RIAA, AFM and AFTRA thereto; or, alternatively, to reduce significantly their recordkeeping requirements under statutory

[35] College Broadcasters' Comments at 23.

license to include only sound recording title, featured artist, and, where available, record label, to be provided on a sampling basis.

Dated: April 26, 2002

Respectfully submitted,



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Radio Station KCSB
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Radio Station KZSC
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Radio Station KSPC
Pomona College
Claremont, California

Radio Station KFJC
Foothill College
Los Altos, California

Radio Station KZSU
Stanford University
Stanford, California

Radio Station KXUL
University of Louisiana at Monroe
Monroe, Louisiana

Radio Stations WFNP AM and FM
SUNY, New Paltz
New Paltz, New York

Radio Station WSBF
Clemson University
Clemson, South Carolina

Radio Station KTRU
Rice University
Houston, Texas